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In The

Supreme Court of the United States

October Term, 1993

ALLIED PRODUCTS CORPORATION,

Petitioner,

v.

DIMITRIOS TH. VAGENAS, SPYRIDON TH. VAGENAS, CHRYSOSTOMOS TH. VAGENAS, AND CONSTANTINOS TH. VAGENAS,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

In its petition for certiorari, petitioner presented an incomplete and inaccurate analysis of the holding of the Court of Appeals[1] and greatly overstated its importance to others than the parties. As described herein, certiorari should be denied in this case because:

1) the Court of Appeals based its decision on two independent and adequate grounds, but

[1] The decision of the Court of Appeals (herein, the "Opinion") is attached to the petition at Appendix A and is reported at 988 F.2d 104 (11th Cir. 1993).

petitioner has only presented one of them for review by this Court;

2) the Court of Appeals' decision is not in conflict with any decision of this Court or of any other Court of Appeals;

3) this case does not present special or important reasons for the granting of certiorari;

4) petitioner seeks review of an interlocutory order that is not yet ripe for consideration by this Court; and

5) the Court of Appeals' decision was correct.

STATEMENT OF THE CASE

Respondents respectfully refer the Court to the factual statement presented by the Eleventh Circuit in its opinion (Pet. at A-2 to A-3) for an objective statement of the pertinent background for its decision.

Petitioner's Statement of the Case failed to note that the Court of Appeals' opinion was based on separate, independent and adequate, federal and state law grounds, a fact that is crucial to the question of whether certiorari should be granted. The first basis on which the Court of Appeals relied in reversing the District Court's finding that the two year residual limitations period applied to this case was that which is the subject of the petition to this Court: the pertinence and proper construction of the Treaty of Friendship, Commerce and Navigation Between the United States and Greece, 5 U.S.T. 1829, T.I.A.S. No. 3057 (1951) (the "Greek FCN Treaty").

As a second, fully independent ground for its decision, the Court of Appeals analyzed the entirety of the Alabama Code pertaining to limitations periods and held that the District Court erred in applying the two year residual statute of limitations to this action seeking enforcement of a foreign country judgment, as that two year provision only pertained to tort claims. Petitioner has appealed only the federal law question and has not presented the statutory construction ground as an issue for this Court to review.

Further supplementing the Statement of the Case presented in the petition, in addition to the petition for rehearing that petitioner filed in the Eleventh Circuit, petitioner filed a suggestion for rehearing *en banc*. Both initiatives were denied.

REASONS WHY THE PETITION SHOULD BE DENIED

I. The Court of Appeals Based Its Decision On Two Independent And Adequate Grounds, But Petitioner Has Only Presented One Of Them For Review By This Court

Petitioner's desired reversal on the issue of the meaning of the Greek FCN Treaty would have no practical effect in this case. The Court of Appeals rested its decision on two independent grounds, one of which this Court is not even asked to address, and either of which is sufficient to sustain the judgment. As a consequence, this Court's opinion on the question presented effectively would be advisory.

Petitioner's brief omits a crucial portion of the opinion below. The Court of Appeals found that "the treaty would preempt Alabama law if there were a conflict, *but none exists.*" Opinion, Pet. at A-4 (emphasis added). The court expressly found no conflict because the Alabama limitations period that most appropriately applied to this case is the 20-year period contained in Alabama Code § 6-2-32. *Id.* at A-5. It read that provision as being consistent with the FCN Treaty. *Id.* Based on either legal theory, in the Court of Appeals' view, the District Court should have applied the 20-year limitations period to the case at bar.

In its petition for certiorari, petitioner totally ignored the second, state statutory ground for the decision below and instead solely presented the treaty construction issue for this Court's review. *See e.g.* "Question Presented For Review" (Pet. at i) and the summary of petitioner's argument (Pet. at 6). Petitioner undoubtedly viewed the treaty issue as of greater potential interest to this Court for review, but that does not justify its failure to appeal the independent statutory ground.

Petitioner's failure to present or argue a state law legal theory that the court below relied upon as an independent and adequate ground for its decision is fatal. This Court's Rule 14.1(a) states that "only questions set forth in the petition, or fairly included therein, will be considered by the Court." Even if the Court were to reverse the Court of Appeals on the issue presented in the petition and hold that the Greek FCN Treaty did not mandate nondiscriminatory treatment of a Greek judgment, there would be no practical effect on this case. The independent, statutory construction ground for the Court

of Appeals' decision would nevertheless result in a reversal of the District Court's judgment and reinstatement of respondents' action. As this Court explained in *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U.S. 283, 292, 294 (1982):

> If [State law] provides an independent ground for the Court of Appeals' judgment, our possible disagreement with its exposition of federal law would not provide a sufficient basis for reversing its judgment. . . . If [State] law provides independent support for the Court of Appeals' judgment, there is no need for decision of the federal issue.

See also Richards v. *United States*, 369 U.S. 1, 16 n.35 (1962) ("We ordinarily accept the determinations of Courts of Appeals on questions of state law. . . . "); *United States* v. *Hastings*, 296 U.S. 188, 193 (1935) ("Review of a judgment which we cannot disturb, because it rests adequately upon a basis not subject to our examination, would be an anomaly. . . . [and an] expression of an abstract opinion.").

II. The Court of Appeals' Decision Is Not In Conflict With Any Decision Of This Court Or Of Any Other Court of Appeals

Petitioner does not rely on decisions of any Courts of Appeals and therefore cannot contend that the Eleventh Circuit's decision is in conflict with that of any other Court of Appeals. Petitioner does cite various decisions of this Court, but none are in conflict with the judgment at bar or even raise related issues.

Citing *Canadian Northern Ry. Co.* v. *Eggen*, 252 U.S. 553 (1920), *M'Elmoyle* v. *Cohen*, 38 U.S. (13 Peters) 312 (1839), and similar cases, petitioner contends that this Court held that states could create a differential limitations period between their own and sister state judgments. Such precedent has no bearing on whether an international treaty, which supersedes any contrary state law,[2] can require that a state not impose a differential limitations period between sister state and foreign country judgments being presented for enforcement.

The other line of cases from this Court cited by petitioner, *Maiorano* v. *Baltimore & Ohio Railroad Co.*, 213 U.S. 268 (1909), and *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989), relate to treaties with entirely different texts on the issues at bar than the Greek FCN Treaty and in no manner pertain to statutes of limitations or enforcement of judgments.

III. This Case Does Not Present Special Or Important Reasons For The Granting Of Certiorari

This Court will grant certiorari "only when there are special and important reasons therefor." Rule 10.1. This case does not present any such reasons and cannot be expected to be of material consequence beyond the parties involved.

The likely impact of this suit in Alabama is reflected by the fact that the parties and the two courts below could identify only several cases in the history of that

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[2] *See Volkswagenwerk Aktiengesellschaft* v. *Schlunk*, 486 U.S. 694, 699 (1988); Opinion, Pet. at A-4 to A-5.

state which involved enforcement of a foreign country judgment (and none involved a limitations period issue). Similarly, there apparently has been only one reported decision in the whole United States in the past 100 years in which a residual statute of limitations was an issue in an action for enforcement of a foreign country judgment.[3] Seemingly, state legislatures have not created the barriers for foreign persons bringing judgments to this country for enforcement that petitioner seeks to erect.

Petitioner offers no "special" or "important" reasons warranting the granting of certiorari on its appeal of an interlocutory order and, respondents submit, there are none. There has been no perceptible public interest in the question presented in this petition in the 220 years since the earliest friendship, commerce and navigation treaties were entered into by the United States, and there is no reason to expect that there will be any greater interest in the next 220 years. The public interest or importance of the independent, state law ground for the Court of Appeals' decision is even more remote.

IV. Petitioner Seeks Review Of An Interlocutory Order That Is Not Yet Ripe For Consideration By This Court

The District Court below dismissed this action prior to trial on the ground that it was barred by the applicable statute of limitations. The Court of Appeals reversed and

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[3] That case, *Attorney General of Canada* v. *Tysowski*, 118 Idaho 737, 800 P.2d 133 (App. 1990), involved a materially different statute of limitations scheme than that in Alabama.

remanded the case, impliedly holding that the matter should proceed toward trial without hindrance by a limitations period. Petitioner here has appealed that interlocutory order.

While this Court has the discretion to grant certiorari regarding interlocutory orders, it is rarely exercised. "As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision. [citations omitted] And, except in extraordinary cases, the writ is not issued until final decree." *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916); *see also Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook Railroad Co.*, 389 U.S. 327, 328 (1967) (denying certiorari " . . . because the Court of Appeals remanded the case [and thus] it is not yet ripe for review by this Court").

V. The Court Of Appeals' Decision Was Correct

In a unanimous decision that was unaltered by a petition for rehearing and suggestion of rehearing *en banc*, the Court of Appeals held that both Alabama law and the Greek FCN Treaty required a determination that a 20-year limitations period should have been applied by the District Court to this action. That decision was plainly correct on both grounds.

Petitioner seeks reversal of the Court of Appeals' decision, contending that the finding based on the Greek FCN Treaty somehow operated to "overrid[e] Alabama law." Pet. at 9. Petitioner's reading of the opinion is

contradicted by the Court of Appeals' statement that there is no conflict between the Treaty and state law on this issue. Opinion, Pet. at A-4. Moreover, petitioner provides no evidence that the Alabama legislature intended that the limitations period here be other than 20 years.

Since petitioner has not challenged the component of the Court of Appeals' judgment premised on the state statute of limitations scheme, respondents will not address it further here, except to note that the Court of Appeals dismissed petitioner's statutory argument as "frivolous." Opinion, Pet. at A-6.

Separately relying on the Greek FCN Treaty, the Court of Appeals held that " . . . a Greek national with a foreign judgment must be given the same twenty-year time frame to enforce the judgment as is available [under Alabama Code § 6-2-32] to the United States citizen seeking to enforce a sister state judgment in Alabama." Opinion, Pet. at A-5. This holding is consistent with the clear intent of the Treaty.

A. Petitioner Misconstrued the Meaning of "National Treatment"

Unless the Treaty precept mandating "national treatment . . . with respect to access to the courts of justice . . . in all degrees of jurisdiction"[4] is to be deprived of

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[4] Article VI, para. 1 of the Greek FCN Treaty, 5 U.S.T at 1841. Article XXIV, para. 1 of that Treaty, 5 U.S.T. at 1907, defines the term "national treatment" as requiring that "treatment accorded within the territories of a Party [be] upon terms no less favorable than the treatment accorded therein, in like situations,

any practical meaning, it must be construed to require that a state must afford equivalent enforcement rights to Greek citizens with Greek court judgments as is provided to American citizens with sister state judgments. Since Greek nationals can be expected to be obliged by financial and practical considerations to pursue their legal remedies initially in their own country, the very purpose of "national treatment" would be defeated if the ensuing Greek court judgment were unenforceable in the United States because of an arbitrarily abbreviated limitations period. Petitioner's view of the Treaty would allow Alabama to impose a 10-day limitations period – for example – on actions brought by Greeks to enforce a Greek court judgment while providing 20 years to Americans with sister state judgments without "discriminating" against the Greek citizens.

B. The Court of Appeals' Determination of the Appropriate Limitations Period Implicates No Constitutional Issues and Conflicts With No Decisions on Full Faith and Credit or International Comity

In an effort to inflate the importance of the Court of Appeals' decision, the heart of petitioner's argument (wrongly) declares that the decision established rights of

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to nationals, companies, products, vessels or other objects, as the case may be, of such Party. The term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects as the case may be, of both Parties."

foreign nationals that are superior to those afforded United States citizens under the Full Faith and Credit Clause (Article IV, Section 1) of the Constitution. Petitioner further contends that the Court of Appeals misunderstood basic principles of international comity. Pet. at 10-14.

Petitioner cites no authority for its argument that either the Full Faith and Credit Clause or principles of international comity mandate that a state impose a shorter limitations period for enforcing a foreign country judgment than a sister state judgment. The decision of the Court of Appeals does not implicate that issue. The Eleventh Circuit merely chose among several Alabama statutes of limitations.

The Court of Appeals' decision did not refer to full faith and credit or comity because those concepts were not relevant to the question presented. The sole issue on appeal was a determination of what limitations period was required by a treaty and/or state law regarding an action to enforce a Greek court judgment. That question has no bearing on full faith and credit/comity issues: namely, the extent of deference that should be given the foreign court judgment once the United States court

determines it has been filed in a timely manner.[5] That matter will be heard for the first time by the District Court upon remand.

In sum, petitioner presents the question of whether the Greek FCN Treaty should be construed to provide these respondents with a right of access to a United States court for a determination of whether their Greek court judgment is enforceable against the American debtor. The Eleventh Circuit correctly decided that matter. As well, there are no Constitutional issues presented and no relevancy to this case of any prior decisions of this Court or of any other court pertaining to the Full Faith and Credit Clause, the breadth of international comity or any other matter of public consequence.

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[5] Even if there were some relationship between the two issues, petitioner's concern that the Court of Appeals has compromised the significance of the full faith and credit provided to sister state judgments is misplaced. State legislatures currently are taking action to eliminate the distinctions relating to enforceability between sister state judgments and foreign country judgments. Twenty two states have adopted the Uniform Foreign Money-Judgments Recognition Act. 13 Uniform Laws Annot. 261. Section 3 of that Act provides that a foreign money judgment "is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit." Moreover, "courts in states without the Act have looked to the Act as a source in determining state common law dealing with recognition and enforcement." Brand, "Enforcement of Foreign Money Judgments in the United States: In Search of Uniformity and International Acceptance," 67 *Notre Dame L. Rev.* 253, 265 n.40 (1991).

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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